IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6432 OF 2006

Tanaji Ambadas Ghongade .. Petitioner

Versus

Annasaheb Prabhakar Swami & Ors... Respondents

Mr.S.S.Shah for petitioner

Mr.Sameer Kumbhakoni for respondent No.1 to 6

CORAM : S.C.DHARMADHIKARI, J.

DATE : 29th November 2007

P.C.

. This petition challenges an order passed by the learned Ad-hoc Dist.Judge, Solapur on 15th July 2006, refusing to condone the delay in filing appeal. From a perusal of the order

passed by the Ad-hoc Dist.Judge, it is apparent that the order does not address itself to the main issue, viz., where there is sufficient cause shown for condoning the delay in filing the appeal.

2. A perusal of paras 3 and 4 of the impugned order makes it clear that the same proceeds on the basis that the appeal at the instance of the present petitioner is not maintainable as he is stranger to the litigation. It is, therefore, conceded before me that this cannot be a ground on which an application of the present nature could have been dismissed.

3. Even otherwise, I find that the learned Judge was not addressing himself to the issue at hand i.e. whether the delay of 3 years, 5 months and 20 days is capable of being condoned or not. Learned Judge does not fault the petitioner for approaching the court belatedly. However, he

does not observe nor does he hold that the cause shown is not sufficient and lacks in bonafides or that the petitioners were negligent.

4. In such circumstances, the order under challenge deserves to be and is accordingly quashed and set aside. Application for condonation of delay filed by the petitioner stands allowed. However, the petitioner to pay costs quantified at Rs.5000/- to the respondent Nos. 1 to 5 in the trial court within two weeks. If costs are paid, the appeal would be registered and, thereafter, disposed of on merits and in accordance with law.

(S.C.Dharmadhikari, J)